

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

State of North Dakota, by and through the North
Dakota State Board of Higher Education, and the
University of North Dakota,

Plaintiff,

v.

National Collegiate Athletic Association,

Defendant.

**SETTLEMENT AGREEMENT AND
MUTUAL RELEASE**

FILED IN THE OFFICE OF
CLERK OF DISTRICT COURT
GRAND FORKS COUNTY, N. DAK. ON

Civil No. 06-C-01333

OCT 26 2007

REBECCA ABSEY, CLERK

BY

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into between the State of North Dakota, acting by and through the North Dakota State Board of Higher Education and the University of North Dakota ("UND"), and the National Collegiate Athletic Association ("NCAA").

WHEREAS, on or about August 5, 2005, the NCAA Executive Committee announced a Policy regarding the display of Native American nicknames, mascots and imagery at NCAA Championship events (the "Policy"); and

WHEREAS, pursuant to the Policy, uniforms or other paraphernalia with Native American references or images cannot be worn or displayed at NCAA Championship competitions, and institutions which continue to display or promote Native American references are prohibited from hosting Championship events; and

WHEREAS, disputes and differences have arisen between UND and the NCAA regarding promulgation of the Policy and application of the Policy to UND; and

WHEREAS, UND filed a civil action advancing certain claims against the NCAA, which action is styled *State of North Dakota, et al. v. National Collegiate Athletic Association*, Civil No. 18-06-C-1333, in the District Court, Northeast Central Judicial District, Grand Forks County, North Dakota; and

WHEREAS, UND asserted claims against the NCAA for breach of contract, breach of the implied covenant of good faith and fair dealing, and unlawful restraint of trade in violation of the North Dakota state antitrust laws; and

WHEREAS, UND recognizes that North Dakota Sioux Tribes, as the descendants of the indigenous people of the Northern Great Plains who UND strives to honor with its nickname, have important contributions in determining whether, to what extent and in what manner the "Sioux" name and the "Fighting Sioux" nickname or logo should continue to be used in conjunction with the athletic tradition at UND; and

WHEREAS, Plaintiff and Defendant each deny that they have any liability to the other, whether arising out of the foregoing lawsuit or on any other basis; and

WHEREAS, Plaintiff and Defendant desire to settle and extinguish all claims, rights of action, causes of action, and demands between themselves that they have or could have,

NOW, THEREFORE, in consideration of the agreements, releases and dismissal hereinafter described, the parties agree as follows:

1. Plaintiff hereby voluntarily settles, resolves and releases all claims asserted, or which could have been asserted, against any party or individual in the above-captioned matter, and in doing so will stipulate to dismissal of the above-captioned lawsuit with prejudice. Such dismissal shall be filed with the appropriate Court within three (3) days of the date this Agreement is fully executed. By such dismissal and by this Agreement, UND, with the intention of binding itself and its

administrators, employees and legal representatives, forever releases and discharges the NCAA and all insurers, officers, directors, employees, legal representatives, and all other persons from all claims, causes of action, and demands of every kind, including attorneys fees, arising out of, resulting from or in any manner pertaining to the Policy, except as expressly reserved in Section 3 below, which have been, or could have been, asserted by plaintiff as of the date of this Agreement.

2. In consideration for UND's release of its claims, the NCAA shall agree as follows:

a. **Effect of Namesake Approval.** UND will be provided a period of time until November 30, 2010 (the "Approval Period"), to seek and obtain namesake approval for its nickname and related imagery, during which time the Policy will not apply to UND and UND will not be restricted from hosting and bidding to host championship events for which it otherwise would be eligible to host. To secure approval qualifying UND for a namesake exemption from the Policy, UND must have clear and affirmative support for the "Fighting Sioux" nickname and logo, in the form set forth in Subsection 2(c) below, from both the Spirit Lake Tribe ("Spirit Lake") and the Standing Rock Sioux Tribe ("Standing Rock"). If UND obtains such support within the Approval Period, then the Policy will not apply to UND until such time as either (i) the NCAA abolishes the namesake exemption for all schools and makes the Policy apply, with all of its restrictions, to all exempted schools, or (ii) either of the tribes named in this Subsection withdraws or otherwise reverses its support for UND's use of the "Fighting Sioux" nickname and related imagery. The form of withdrawal or reversal, if any, is described in Subsection 2(c) below. The "Best Practices" portion of the Policy will apply to UND uniformly as it applies to all schools. No change or modification in the current namesake exemption will have any affect whatsoever on UND's rights under this Section, unless the namesake exemption is completely repealed so no member institutions are exempted from the Policy by that exemption. If the namesake exemption is completely repealed

before UND secures namesake approval as set forth in this Agreement, then UND shall not be able to gain a namesake approval under this Subsection. If the namesake exemption is completely repealed after UND secures approval as set forth in this Agreement, then no school, including UND, will be entitled to the exemption.

b. **Efforts to Influence Tribes.** The NCAA agrees that during the Approval Period it will not initiate contact with any Sioux Tribe for the purpose of attempting to persuade any tribal governmental entity to provide or not provide namesake approval to UND. Such contact, initiated by any representative duly authorized to speak on behalf of the NCAA acting in his or her official capacity for the purpose of attempting to persuade any Sioux Tribal entity to provide or not provide namesake approval, shall be a material breach of this Agreement. Nothing in this Subsection, however, shall be interpreted as precluding any NCAA official from responding to questions or seeking clarification regarding the position of one or more tribes.

c. **Form of Namesake Approval.** The NCAA recognizes that the Spirit Lake Tribal Council previously provided a resolution dated December 13, 2000. For purposes of this Agreement, the December 13, 2000 resolution shall constitute namesake approval on behalf of Spirit Lake upon written confirmation, by an individual duly authorized to bind or speak on behalf of Spirit Lake, that the Tribe approves of and affirmatively supports UND's use of the current nickname and related imagery. In the alternative, approval by Spirit Lake unrelated to the December 13, 2000 resolution shall be communicated in writing by an individual duly authorized to bind or speak on behalf of the Tribe. For purposes of this Agreement, namesake approval from Standing Rock shall be adopted by any means allowed in the Tribe's Constitution and shall be in writing. For purposes of this Agreement, withdrawal of approval by either Tribe shall be memorialized in the same form as the approval.

d. **Absence of Namesake Approval.** Within thirty (30) days from the date of this Agreement, UND will announce that its Athletic Department will transition to a new nickname and logo which do not violate the Policy or render UND subject to the Policy, if (i) it is unable to secure namesake approval as set forth in this Agreement prior to the expiration of the Approval Period, or (ii) namesake approval, once provided, is withdrawn. In the event UND announces a transition to a new nickname and logo which do not violate the Policy, the transition will be completed on or before August 15, 2011, subject to Subsection 2(f), below. If UND does not adopt a new nickname and logo, or if the transition to a new nickname and logo is not completed prior to August 15, 2011, then UND will be returned to the list of institutions subject to the Policy. In the event UND secures namesake approval but such approval is withdrawn after November 30, 2010, UND shall have one (1) year to complete transition to a new nickname and logo, unless the parties mutually agree to a period of time longer than one (1) year.

e. **Appropriate use discussions between UND and Namesake Tribes.** It is understood that UND will continue to solicit on an ongoing basis, both before and after Namesake approval is obtained, the views of North Dakota Sioux Tribes on the appropriate use of the Sioux name and related imagery in athletics at UND. No tribal resolution intended to communicate its views, concerns, or suggestions as part of this ongoing dialogue shall be construed as nullifying prior Namesake approval, unless the tribal resolution clearly expresses an intent to withdraw support as outlined in Subsection 2(a) of this Agreement.

f. **Permitted Imagery at the REA and other venues.** In the event there is a nickname change pursuant to Subsection 2(d), UND will not use a facility to host NCAA championship contests, whether or not owned by UND, which contains images commonly associated with Native American culture, except as expressly set forth herein:

1. Imagery of historical significance. Retaining imagery of independent historical significance will not disqualify the Ralph Engelstad Arena ("REA"), or other venues, from hosting NCAA championship contests. A complete list of those images which the parties agree have independent historical significance is attached hereto as Schedule A, Category 1, and incorporated herein.

2. Items Embedded in Architecture. Retaining imagery which is embedded in architecture will not disqualify the REA, or other venues, from hosting NCAA championship contests. A complete list of those images which the parties agree are embedded in architecture is attached hereto as Schedule A, Category 2, and incorporated herein.

3. Removal in the Ordinary Course. Retaining certain specifically identified imagery which will ultimately be replaced because of ordinary wear and tear will not disqualify the REA, or other venues, from hosting NCAA championship contests. A complete list of those images which the parties agree will be replaced in the ordinary course, but in no event later than the dates identified, is attached hereto as Schedule A, Category 3, and incorporated herein. Nothing in this Agreement precludes UND from bidding to host future predetermined events, including at venues which are continuing to make transitions consistent with this Agreement. The NCAA may, at its discretion, accept or reject a bid proposal from UND which provides that transitions in Schedule A which are not then, but are required to be, complete will be completed prior to the date of the championship event for which the bid is submitted.

g. **"Best Practices" Portion of the Policy.** During the Approval Period, or until such time as UND secures namesake approval during that Approval Period, the "Best Practices" portion of the Policy will also be suspended in its application to and not apply to UND. Within 5 (five) days

of the date of this Agreement, the NCAA shall issue a statement to its members which includes the following language: "Application of the Policy to UND has been suspended, subject to terms outlined in this Agreement, by mutual agreement between UND and the NCAA. No member institution should use the Policy as a factor in scheduling regular season competition with UND. Regular season competition should be scheduled in accordance with each individual institution's own internal policies and practices." If UND announces a transition to a new nickname and logo at the end of the Approval Period, or at any time during the Approval Period, then the NCAA shall issue a statement to its members which includes the following language: "UND has been removed from the list of schools subject to the Policy and no member institution should use the Policy and its prior application to UND as a factor in scheduling regular season competition. Regular season competition should be scheduled in accordance with each individual institution's own internal policies and practices."

h. **Control of Venue.** The NCAA recognizes that UND does not own or control all venues in which its athletic teams ordinarily compete. If UND is removed from the list of institutions subject to the Policy because it transitions to a new nickname and logo, UND may host NCAA championship events at facilities which do not contain or display imagery inconsistent with the Policy or this Agreement, including, but not limited to, any facilities owned and controlled by UND. It may also host regular season contests in any venue of its choosing, provided the venue is otherwise fit for use. However, absent namesake approval as set forth herein, UND expressly waives any opportunity to host NCAA championship events at outside venues (*i.e.*, venues UND does not own) containing or displaying imagery which is inconsistent with the Policy and/or this Agreement.

i. **NCAA Statement on Campus Environment.** The NCAA shall make a public announcement which includes the following language, including posting the text on the NCAA web site:

The NCAA recognizes the University of North Dakota's many programs and outreach services to the Native American community and surrounding areas. The University of North Dakota is a national leader in offering educational programs to Native Americans.

The University has indicated that it intends to use the current name and logo with the utmost respect and dignity, and only for so long as it may do so with the support of the Native American community. The NCAA does not dispute UND's sincerity in this regard.

The NCAA believes, as a general proposition, that the use of Native American names and imagery can create a hostile or abusive environment in collegiate athletics. However, the NCAA did not make any other findings about the environment on UND's campus. The NCAA also acknowledges that reasonable people can disagree about the propriety of Native American imagery in athletics. The NCAA believes that the time has come to retire Native American imagery in college sports.

j. **Intellectual Property.** If UND announces a transition to a new nickname and logo at the end of the Approval Period, or at any time during the Approval Period, then any intellectual property and/or licensing rights to the "Fighting Sioux" nickname and mark shall remain, except as provided herein, the sole property of UND and shall not be further assigned, released, abandoned, exercised, or otherwise used, except as expressly permitted herein, in connection with UND's Athletic Department. UND reserves and shall have the right, at any time, to assign or transfer intellectual property or licensing rights of the "Fighting Sioux" nickname and mark to any Sioux nation or tribe. Retention of images bearing the nickname and logo as displayed on or before the date of this Agreement shall not be deemed a violation of this Subparagraph. Residual trademark rights and good will in connection with the continuing and continuous commercial use through retention of images bearing the nickname and/or logo demonstrates continuing trademark use and retention of trademark rights.

3. Reservation of Legal Rights. To the extent the NCAA modifies, adds to, expands or otherwise changes the Policy, its interpretation, or its application in any regard following the execution of this Agreement, UND shall retain the right to challenge the changed Policy in any manner and on any grounds it chooses, including without limitation through court action challenging the power of the NCAA to enact the Policy or any portion thereof.

4. Public Accountability. It is understood that this Agreement in no way restricts any officer, employee, or agent of the State of North Dakota or the NCAA from discussing the events leading up to and including this Settlement Agreement nor does the Agreement restrict any officer, employee, or agent of the State of North Dakota from releasing any public documents under Open Records Laws, except as otherwise provided by court order.

5. Modifications in Writing. Any modifications to this Agreement must be in writing and executed by UND and the NCAA.

6. Entire Agreement. UND and the NCAA agree that this Agreement constitutes all the agreements between them, and they have no other written or oral agreements or understandings.

7. Governing Law. This Agreement shall be construed and enforced in connection with the laws of the State of North Dakota.

8. Warranties. The parties warrant that before executing this Agreement, they have had the advice of their attorneys; that they have read the same and fully understand its contents and meaning; and that they have authority and competency to execute this document on behalf of the respective parties hereto.

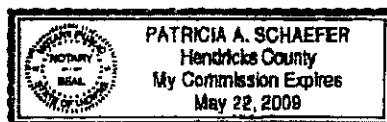
Dated this 25th day of October, 2007.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

By: Anger Brand

Subscribed and sworn to before me
this 25th day of October, 2007.

Patricia A. Schaefer
Notary Public



Dated this 26 day of October, 2007

Attest:

By: [Signature]
Secretary

NORTH DAKOTA STATE BOARD OF HIGHER
EDUCATION

By: [Signature]
President

State of North Dakota
Office of Attorney General

Wayne K. Stenehjem
Wayne K. Stenehjem
Attorney General

SCHEDULE A.

Category 1: Items of Historical Significance.

- a. All championship banners, photographs, trophies, and dedication memorials and mirrors displayed at UND and associated sites including the Ralph Engelstad Arena.¹
- b. Native American sculpture (busts) and player statue currently located at Ralph Engelstad Arena.²
- c. Sitting Bull Memorial statue on grounds of Ralph Engelstad Arena.³
- d. Betty Engelstad Sioux Center arena entrance plaque.⁴

Category 2: Cost Prohibitive Changes.

- a. In floor granite logos located at the Ralph Engelstad Arena.⁵

Category 3: Transition in the Ordinary Course of Wear and Replacement.

- a. All carpet, artificial turf, tile, laminate or wood flooring, with the exception of imagery affixed through decals, provided the items are replaced no later than December 31, 2012.⁶
- b. Aisle Seating standards at the Ralph Engelstad Arena, provided the items are removed no later than December 31, 2012.⁷
- c. Brass etched logos located within the Ralph Engelstad Arena, provided the items are removed no later than December 31, 2011.⁸

¹ See Exhibit A, Pictures 1-25. Such championship items earned during the Approval Period, which obviously cannot be photographed at this time, shall also be considered "Items of Historical Significance" for purposes of this Agreement.

² See Exhibit A, Pictures 26-27.

³ See Exhibit A, Picture 28.

⁴ See Exhibit A, Pictures 29-30.

⁵ See Exhibit A, Pictures 31-32.

⁶ See Exhibit A, Pictures 33-36.

⁷ See Exhibit A, Picture 37.

⁸ See Exhibit A, Picture 38.

- d. Lighted exterior logos at the Ralph Engelstad Arena, provided the items are removed or replaced no later than December 31, 2011.⁹
- e. All official imagery located within administrative and other areas of the Ralph Engelstad arena and UND campus not ordinarily open to the public during athletic competition, provided the items are replaced no later than December 31, 2013.¹⁰
- f. Etched glass doors leading to the club areas of the Ralph Engelstad Arena, provided the items are replaced no later than December 31, 2012.¹¹
- g. Etched glass doors leading to the administrative areas of the Ralph Engelstad Arena provided the items are replaced no later than December 31, 2015.¹²

⁹ See Exhibit A, Picture 39.

¹⁰ See Exhibit A, Picture 40.

¹¹ See Exhibit A, Picture 41.

¹² See Exhibit A, Picture 42.